U.S. Customs and Border Protection

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING A WHOOP STRAP DEVICE

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of a device referred to as a Whoop Strap. Based upon the facts presented, CBP has concluded in the final determination that the incomplete Whoop Strap and the programming in the United States would not render the Whoop Strap device to be a product of a foreign country or instrumentality designated for purposes of U.S. Government procurement.

DATES: The final determination was issued on November 10, 2020. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within January 13, 2021.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0046.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 10, 2020, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of a Whoop Strap device for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H309761, was issued at the request of Whoop Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the incomplete imported Whoop Strap and the programming in the United States would not render the finished Whoop Strap to be a product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: November 24, 2020.

ALICE A. KIPEL,
Executive Director,
Regulations and Rulings,
Office of Trade.

HQ H309761
November 10, 2020
OT:RR:CTF:VS H309761 CMR
Category: Origin

STEVEN B. ZISSER, ESQ.
ZISSER GROUP
9355 AIRWAY ROAD
SUITE 1
SAN DIEGO, CA 92154

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); subpart B, Part 177, CBP Regulations; Country of Origin of a Whoop Strap Device

DEAR MR. ZISSER:

This is in response to your request of February 27, 2020, on behalf of your client, Whoop, Inc., for a final determination concerning the country of origin of a device referred to as a "Whoop Strap." This request is being sought because your client wants to confirm eligibility of the device for U.S. government procurement purposes under Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. 2511 *et seq.*). As an importer of the merchandise imported from China that is processed in the United States to become a finished "Whoop Strap," your client may request a final determination pursuant to 19 CFR 177.23(a).

FACTS:

You describe the "Whoop Strap" as:

> . . . a fitness performance tracker that combines a wrist-worn device with a cloud-based analytics system. It incorporates a sensor that generates data that is to be processed through the analytics system to provide information relating to the fitness of the individual wearing the wrist-worn device.

You indicate "[t]he products consists of hardware, a sensor, printed circuit board assembly (PCBA) incorporating a radio module, and battery which [are] encased in a polycarbonate housing with clasp and attached to a fabric wristband." A memory device on the PCBA is adapted to receive and store proprietary software which is developed by Whoop. The software records and communicates the fitness data and generates the analytics.

The manufacturing of the hardware of the Whoop Strap occurs in China where the sensor, PCBA, battery and housing are assembled. You also indicate that there is a cover that is placed over the case/kit. You state:

> All hardware components are "designed" in the USA and produced and assembled in China. In the USA, the hardware is attached to the fabric waistband with a clasp.

After assembly in China and before exportation to the United States, the Whoop Strap is tested to confirm the assembly was properly done. You refer to the test as a "power on" test which requires minimal software and equipment. You indicate that the testing software is removed prior to shipment to the United States and "[a] 'simple' firmware updater is loaded on the device in China [that] will allow further software to be loaded in the USA." At the time of shipment from China, you indicate that the Whoop Strap does not function.

After importation into the United States, "Whoop programs the proprietary communications software, file software, and battery pack communications firmware." You state that "[t]his process is achieved by writing, testing and implementing the necessary code to make the product function as intended." The software and firmware codes are developed and written in the United States by Whoop employees. Once programmed in the United States, the device functions as intended, *i.e.,* being able to sense and communicate health data to the user. The programming of the device in the United States greatly increases its value.

ISSUE:

Whether the Whoop Strap, which is assembled in China and programmed with software and firmware in the United States, is eligible under the Title III of the TAA, as amended (19 U.S.C. 2511–2518).

LAW AND ANALYSIS:

U.S. Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.,* which implements Title III, Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518).

The rule of origin set forth in 19 U.S.C. 2518(4)(B) states:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as:

> . . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

The regulations define a "designated country end product" as:

> WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

A "WTO GPA country end product" is defined as an article that:

> (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
>
> (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

See 48 CFR 25.003.

China is not a WTO GPA country.

The article imported into the United States is the Whoop Strap assembled hardware consisting of a sensor, PCBA, battery and housing with a cover placed over the case/kit. The article, in its condition as imported, is incomplete and non-functional as it lacks the software and firmware necessary for it to function. The incomplete Whoop Strap, at the time of importation, is a product of China. CBP is of the view that programming would not result in a substantial transformation. This is consistent with CBP's prior determination in H284523 dated August 22, 2017, where CBP held that an imported tablet did not undergo a substantial transformation by programming. *See also* H284617 dated February 21, 2018.

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

> For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, *an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.*

Emphasis added.

Therefore, the Whoop Strap would not be considered to be the product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b). As to whether the Whoop Strap processed in the United States may be considered a "U.S.-made end product" is under the jurisdiction of the procuring agency. *See Acetris Health, LLC.* v. *United States,* No. 2018–2399 (Fed. Cir. February 10, 2020).

HOLDING:

The incomplete Whoop Strap and the programming in the United States would not render it to be a product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b). You may wish to check the classification of this product to determine if it may be subject to any Section 301 duties upon importation.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of

publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

ALICE A. KIPEL,
Executive Director,
Regulations and Rulings,
Office of Trade.

[Published in the Federal Register, December 14, 2020 (85 FR 80798)]

19 CFR PART 177

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN TWO-POST VEHICLE LIFTS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of certain two-post vehicle lifts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter concerning tariff classification of two-post vehicle lifts under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 44, on November 11, 2020. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 28, 2021.

FOR FURTHER INFORMATION CONTACT: Nataline Viray-Fung, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at nataline.viray-fung@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 44, on November 11, 2020, proposing to modify one ruling letter pertaining to the tariff classification of certain two-post vehicle lifts. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N008193, CBP classified certain two-post vehicle lifts in heading 8425, HTSUS, specifically in subheading 8425.41.00, HTSUS, which provides for: Pulley tackle and hoists other than skip joists; winches and capstans; jacks: Jacks; hoists of a kind used for raising vehicles: Built-in jacking systems of a kind used in garages. CBP has reviewed NY N008193 and has determined the ruling letter to be in error. It is now CBP's position that the two-post vehicle lifts are properly classified, in heading 8428, HTSUS, specifically in subheading 8428.90.02, HTSUS, which provides for: Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N008193 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H312164, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated:

GREGORY CONNOR
for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H312164
December 14, 2020
CLA-2 OT:RR:CTF:EMAIN H312164 NVF
CATEGORY: Classification
TARIFF NO.: 8428.90.01

MS. GERTRUDE WILSON
HOCKMAN-LEWIS LTD.
200 EXECUTIVE DRIVE
WEST ORANGE, NJ 07052

RE: Modification of NY N008193; Two-Post Vehicle Lifts.

DEAR MS. WILSON:

This ruling is in reference to New York Ruling Letter (NY) N008193, dated April 5, 2007, regarding the classification of certain two-post vehicle lifts under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N008193, U.S. Customs and Border Protection (CBP) classified the subject articles in subheading 8425.41.00, HTSUS, which provides for: Pulley tackle and hoists other than skip joists; winches and capstans; jacks: Jacks; hoists of a kind used for raising vehicles: Built-in jacking systems of a kind used in garages. Upon reconsideration, CBP has determined that NY N008193 is in error with respect to the classification of the two-post vehicle lifts at issue.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 44, on November 11, 2020. No comments were received in response to that notice. Therefore, CBP is modifying NY N008193 according to the analysis set forth below.

FACTS:

In NY N008193 the subject merchandise is described as "Model numbers MF-29000A (rated at 9000 lbs. lift capacity) and MF-210000X (rated at 10,000 lbs. lift capacity).[*] These lifts are 2-post asymmetric surface-mounted lifts designed to lift passenger-type vehicles for service." CBP classified the two-post lifts in subheading 8425.41.00, HTSUS.

ISSUE:

Whether two-post lifts are classified as hoists and jacks of heading 8425, HTSUS, or as other lifting machinery of heading 8428, HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation ("GRIs") and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all classification purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relevant section or chapter notes. In the event that the goods cannot be classified solely on the

[*] CBP also classified two four-post lifts, identified by model numbers MF-212000A and MF-212000E, in NY N008193. These items are not at issue here.

basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration in this case are as follows:

8425 Pulley tackle and hoists other than skip joists; winches and capstans; jacks.

8428 Other lifting, handling, loading or unloading machinery (for example, lifts, escalators conveyors, teleferics).

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the EN's should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 8425, HTSUS states, in pertinent part:

> The pulley tackle and hoists classified in this heading consist of more or less complex systems of pulleys and cables, chains, ropework, etc., designed to give a mechanical advantage to facilitate lifting (e.g., by use of pulleys of different diameter, toothed wheels, gearing systems). This group includes, *inter alia*: (1) Tackle and hoists in which the chain engages in specially designed projections on the pulley rims. (2) Drum type pulley hoists in which the cable is wound on a drum enclosing the pulley mechanism. This self-contained type of hoist, usually pneumatic or electric, is often mounted on a trolley or crab running on an overhead rail. (3) Hoists consisting of a roller chain running over a geared system of sprocket wheels operated by a crank handle or lever, somewhat as in a jacking system.
>
> Jacks are designed to raise heavy loads through short distances. The heading includes rack and pawl jacks, screw jacks in which the screw is raised by rotation or by rotating a nut fixed in the jack base, and telescopic screw jacks operated by the action of two or more concentric screws, the outer screw turning in the nut in the jack base. In hydraulic or pneumatic jacks, the lifting piston is forced along a cylinder by pressure generated in a pump or compressor which may be separate or built-in. Special type of jacks include: (3) Garage type built-in jacking systems, usually hydraulic.

The EN to heading 8428, HTSUS states, in pertinent part:

> With the exception of the lifting and handling machinery of headings 84.25 to 84.27, this heading covers a wide range of machinery for the mechanical handling of materials, goods, etc. (lifting, conveying, loading, unloading, etc.). They remain here even if specialised for a particular industry, for agriculture, metallurgy, etc.
>
> The heading covers lifting or handling machines usually based on pulley, winch or jacking systems, and often including large proportions of static structural steelwork, etc.

Because the text of heading 8428, HTSUS, covers *other* lifting and handling machinery, we first examine whether the subject merchandise falls under the scope of heading 8425, HTSUS, *i.e.* whether the subject merchandise are "hoists" or "jacks."

When a term is not defined in either the HTSUS or the ENs, which constitute the official interpretation of the Harmonized System, we look to its common and commercial meaning. *See Nippon Kogasku (USA) Inc. v. United States*, 69 C.C.P.A. 89, 92–93 (1982); *C.J. Towers & Sons v. United States*, 69 C.C.P.A. 128, 133–134 (1982). In this case, the HTSUS differentiates between various types of lifting and handling equipment classified under headings 8425, HTSUS, through 8428, HTSUS. The ENs accordingly provide features to distinguish the goods covered by these headings. Specifically, the hoists contemplated by heading 8425 are those consisting of a system of pulleys along with some type of cables, chains, or rope, etc., and a jack of heading 8425 is designed to raise heavy loads through short distances. The ENs further explain that if lifting machinery is not classifiable in heading 8425 (through heading 8427) then it is classified under heading 8428, even if specialized for a particular industry.

In HQ H310333, dated June 26, 2020, we classified substantially similar merchandise to the instant two-post lifts and discussed at length the difference between a hoist and a lift. In that ruling, we observed that common and commercial meanings of "hoist" do not contradict the definitions set forth in the ENs and concluded that a hoist is machinery which pulls an item up through the vertical plane and often across the horizontal plane, typically with a hook that attaches the cargo to overhead chain or rope. With regard to the definition of a "jack," we also determined that the ENs and technical definitions are aligned and that a jack is designed to lift loads over short distances.

We next examined two-post vehicle lifts and determined that they are not hoists because they use platforms or arms to carry the weight of the cargo rather than pulling a load using rope work or chains and a hook. We also concluded that two-post lifts are not jacks of heading 8425 because they raise a load more than a short distance. Finally, we observed that CBP has a longstanding practice of classifying vehicle lifts under heading 8428, HTSUS. *See* NY K85073 (May 4, 2004) (scissor type motorcycle lift), NY N008193 (Apr. 5, 2007) (four post lift), NY N119135 (Aug. 20, 2010) (car stacker), NY N287695 (July 24, 2017) (motorcycle lift), NY N299553 (Aug. 15, 2018) (car lift system).

Similarly, the instant two-post vehicle lifts are not hoists nor are they jacks. They do not pull a vehicle up using a hook and chain or rope, and they raise vehicles more than a short distance. Therefore, they cannot be classified under heading 8425, HTSUS as a hoist or a jack. Rather, we find that they are more appropriately classified with other substantially similar vehicle lifts under heading 8428, HTSUS, as other lifting machinery

In light of the foregoing, we conclude that the two-post vehicle lifts are classified under heading 8428, HTSUS as other lifting machinery.

HOLDING:

By application of GRIs 1 and 6, the two-post lifts are classified in heading 8428, specifically subheading 8428.90.02, HTSUS, which provides for: Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

GREGORY CONNOR
for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A THERMOELECTRIC WINE COOLER DISPLAY CABINET

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the tariff classification of a thermoelectric wine cooler display cabinet.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning the tariff classification of a thermoelectric wine cooler display cabinet under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before January 29, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Eris Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at suzanne.kingsbury@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a thermoelectric wine cooler display cabinet. Although in this notice CBP is specifically referring to New York Ruling Letter ("NY") N300132, dated September 11, 2018 (Attachment "A"), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N300132, CBP classified a thermoelectric wine cooler display cabinet in heading 8418, Harmonized Tariff Schedule of the United States (HTSUS), specifically subheading 8418.69.01, HTSUS, which provides for "[R]efrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; Parts thereof; Other refrig-

erating or freezing equipment; Other." CBP has reviewed NY N300132 and has determined the ruling letter to be in error. It is now CBP's position that the thermoelectric wine cooler display cabinet is properly classified in heading 8418, HTSUS, specifically in subheading 8418.50.00, HTSUS, which provides for "[R]efrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; Parts thereof; Other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating refrigerating or freezing equipment."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N300132 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H304964, set forth as Attachment "B" to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated:

GREGORY CONNOR
for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N300132
September 11, 2018
CLA-2–84:OT:RR:NC:N1:102
CATEGORY: Classification
TARIFF NO.: 8418.69.0180, 9903.88.01

MS. LAUREL TALAN SCAPICCHIO
BJ'S WHOLESALE CLUB, INC.
25 RESEARCH DRIVE
P.O. BOX 5230
WESTBOROUGH, MA 01581

RE: The tariff classification of a wine cooler from China

DEAR MS. SCAPICCHIO:

In your letter dated August 16, 2018 you requested a tariff classification ruling.

The product at issue is the Avanti Wine Cooler, SKU number 149466. The household cooler employs a thermoelectric cooling system and is designed to store bottles in a horizontal and a standing position. The cooler features slide out shelves, a curved glass door, an interior light and an LED digital display. The Avanti Wine Cooler measures 10 inches in width by 25.2 inches in height.

The applicable subheading for the Avanti Wine Cooler, SKU number 149466, will be 8418.69.0180, Harmonized Tariff Schedule of the United States, HTSUS, which provides for Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; Other refrigerating or freezing equipment; Other; Other refrigerating or freezing equipment. The rate of duty is Free.

Effective July 6, 2018, the Office of the United States Trade Representative (USTR) imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. Subsequently, USTR imposed additional tariffs, effective August 23, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(d), HTSUS. For additional information, please see the relevant Federal Register notices dated June 20, 2018 (83 F.R. 28710) and August 16, 2018 (83 F.R. 40823). Products of China that are provided for in subheading 9903.88.01 or 9903.88.02 and classified in one of the subheadings enumerated in U.S. note 20(b) or U.S. note 20(d) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by the aforementioned Chapter 99 subheadings.

Products of China classified under subheading 8418.69.0180, HTSUS, unless specifically excluded, are subject to the additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.01, in addition to subheading 8418.69.0180, HTSUS, listed above.

The tariff is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Notice cited above and the applicable Chapter 99 subheading.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at https://hts.usitc.gov/current.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Sandra Martinez at Sandra.martinez@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H304964
OT:RR:CTF:EMAIN H304964 SKK
CATEGORY: Classification
TARIFF NO.: 8418.50.00

MR. RANDY RUCKER
DRINKER BIDDLE & REATH LLP
191 N. WACKER DR., STE. 3700
CHICAGO, IL 60606

RE: Revocation of NY N300132; Tariff classification of a thermoelectric wine cooler

DEAR MR. RUCKER:

This ruling is in reference to your correspondence of April 11, 2019, in which you request reconsideration of New York Ruling Letter (NY) N300132, dated September 11, 2018, in which U.S. Customs and Border Protection (CBP) classified a thermoelectric wine cooler under heading 8418, Harmonized Tariff Schedule of the United States (HTSUS), specifically subheading 8418.69.01, HTSUS, which provides for "[R]efrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; Parts thereof; Other refrigerating or freezing equipment; Other."

Upon review, we have determined NY N300132 to be in error.

FACTS:

The product at issue in NY N300132 and photographed below is the Avanti Wine Cooler (item #EWC1201), SKU number 149466. The household cooler employs a thermoelectric cooling system and is designed to store up to 12 wine bottles in a horizontal and a standing position. The cooler features slide out shelves, a curved glass door, an interior light and an LED digital display. The Avanti Wine Cooler measures 10 inches in width by 25.2 inches in height.

LAW AND ANALYSIS:

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods will be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 will then be applied in order.

GRI 6 provides as follows:

> For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative section and chapter notes also apply, unless the context otherwise requires.

It is undisputed that the subject merchandise is properly classified under heading 8418, HTS, provides for, *inter alia*, "electric refrigerators and other refrigerating equipment". The determinative issue is at the six-digit level of heading 8418, HTSUS; specifically, whether the subject apparatus is classified under subheading 8418.50, HTSUS, as "other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating refrigerating or freezing equipment," or under subheading 8418.69, HTSUS, as "other refrigerating or freezing equipment."

Several online retail sources describe the subject merchandise as follows:

> 10 Inch Countertop Wine Cooler with 12 Bottle Capacity, Wire Racks, Thermoelectric Cooling, No Vibration, Curved Glass Door and Integrated Soft Touch Digital Display.

See https://www.ajmadison.com/cgi-bin/ajmadison/EWC1201.html (site last visited November, 2020).

> The Avanti 12-Bottle Wine Cooler boasts a black cabinet and concave glass door that make it a stylish addition to any kitchen. With its compact, freestanding design, it fits easily in tight spaces, measuring just over 24 in. wide. Despite its size, it holds up to 12 bottles of wine on its slide-out chrome shelves, with a no-vibration design to carefully preserve the wine.

See https://www.homedepot.com/p/Avanti-12-Bottle-Wine-Cooler-EWC1201/308062501 (site last visited November, 2020).

As the subject merchandise is a counter-top cabinet that stores, displays and refrigerates wine bottles, classification is proper under subheading 8418.50, HTSUS. *See* NY N301170, dated February 6, 2019, in which CBP classified the same merchandise (Avanti Wine Cooler (item #EWC1201)) under subheading 8418.50.00, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the Avanti Wine Cooler (item #EWC1201, SKU number 149466) at issue in NY N300132 is classified under heading 8418, HTS, specifically under subheading 8418.50.00, HTSUS, which provides for "[R]efrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; Parts thereof; Other furniture (chests, cabinets, display counters, show-cases and the like) for storage and display, incorporating refrigerating or freezing equipment."

The applicable rate of duty is free. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N300132, dated September 11, 2018, is hereby REVOKED.

Sincerely,

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

CC: Ms. Laurel Talan Scapicchio
BJ's Wholesale Club, Inc.
25 Research Drive
P.O. Box 5230
Westborough, MA 01581

U.S. Court of Appeals for the Federal Circuit

TAI-AO ALUMINIUM (TAISHAN) CO., LTD., TAAL AMERICA LTD., REGAL IDEAS, INC., Plaintiffs v. UNITED STATES, Defendant ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE, Defendant-Appellant

Appeal No. 2020–1501

Appeal from the United States Court of International Trade in No. 1:17-cv-00216-GSK, Judge Gary S. Katzmann.

Decided: December 17, 2020

ALAN H. PRICE, Wiley Rein, LLP, Washington, DC, for defendant-appellant. Also represented by ROBERT E. DEFRANCESCO, III, LAURA EL-SABAAWI, DERICK HOLT, ELIZABETH S. LEE.

Before PROST, *Chief Judge*, DYK and WALLACH, *Circuit Judges*.

DYK, *Circuit Judge*.

On May 26, 2011, the United States Department of Commerce ("Commerce") issued antidumping and countervailing duty orders on aluminum extrusions from the People's Republic of China ("PRC") ("Orders"). On March 21, 2016, Commerce initiated an anti-circumvention inquiry as to heat-treated 5050-grade extruded aluminum products exported by China Zhongwang Holdings Ltd. and its affiliates. On November 14, 2016, Commerce announced in its Preliminary Determination that it was applying the anti-circumvention inquiry to all heat-treated 5050-grade extruded aluminum products from the PRC, including those of Tai-Ao Aluminum (Taishan) Co., Ltd. and TAAL America Ltd. (collectively, "Tai-Ao") and Regal Ideas, Inc. ("Regal"), and further determined that all such products were circumventing the Orders. Commerce accordingly instructed the United States Customs and Border Protection ("Customs") to suspend liquidation of all heat-treated 5050-grade extruded aluminum products from the PRC entered, or withdrawn from warehouse, on or after March 21, 2016, the date that the original inquiry was commenced.

The Court of International Trade ("Trade Court") found that Commerce did not provide adequate notice to Tai-Ao and Regal that their products were subject to the inquiry initiated on March 21, 2016, and instead "liquidation should have been suspended from the date of the Preliminary Determination," (November 14, 2016), and remanded to Commerce to reformulate its liquidation instructions accordingly.

Tai-Ao Aluminium (Taishan) Co. v. United States ("*Tai-Ao I*"), 391 F. Supp. 3d 1301, 1315 (Ct. Int'l Trade 2019). On remand from the Trade Court, Commerce reformulated its liquidation instructions, instructing Customs to exclude from the scope of the Orders, and therefore exclude from duty assessment, entries for Tai-Ao made between March 21, 2016, and November 13, 2016.[1] The Trade Court sustained Commerce's reformulated liquidation instructions. *Tai-Ao Aluminium (Taishan) Co. v. United States* ("*Tai-Ao II*"), 415 F. Supp. 3d 1391, 1395 (Ct. Int'l Trade 2019). We conclude that the Trade Court did not err in its remand decision and affirm.

BACKGROUND

I

The Tariff Act of 1930, as amended, "permits Commerce to impose two types of duties on imports that injure domestic industries." *See Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194, 1196 (Fed. Cir. 2014). First, Commerce may levy antidumping duties on goods "sold in the United States at less than . . . fair value." 19 U.S.C. § 1673. Second, Commerce may impose countervailing duties on goods that receive "a countervailable subsidy" from a foreign government. *Id.* § 1671(a).

In order to effectively combat circumvention of antidumping duty or countervailing duty orders, "a domestic interested party may allege that changes to an imported product . . . constitutes circumvention under [19 U.S.C. § 1677j]." 19 C.F.R. § 351.225(a) (2020). When such issues arise, Commerce may initiate an anti-circumvention inquiry and issue "scope rulings" that "clarify the scope of an order or suspended investigation with respect to particular products." *Id.*; *see also id.* § 351.225(g)–(j). As we noted in *Deacero S.A. de C.V. v. United States*, Commerce may then "determine that certain types of articles are within the scope of a duty order, even when the articles do not fall within the order's literal scope." 817 F.3d 1332, 1337 (Fed. Cir. 2016); *see* 19 U.S.C. § 1677j. Anti-circumvention inquiries are distinct from "[o]ther scope determinations," which clarify whether products fall

[1] The reformulated liquidation instructions state that Tai-Ao's entries that "were entered, or withdrawn from warehouse, for consumption during the period 03/21/2016 through 11/13/2016 . . . are outside of the scope" of the Orders. J.A. 1237–38. This remedy has the same effect as suspension of liquidation for entries made on or after November 14, 2016.

Commerce did not issue reformulated instructions for Regal because Regal had no entries for the period between March 21, 2016 and November 13, 2016.

within the literal scope of an order. 19 C.F.R. § 351.225(a), (k); *see also Target Corp. v. United States*, 609 F.3d 1352, 1362 (Fed. Cir. 2010) (describing differences between "[c]onventional scope inquiries" and anti-circumvention inquiries).

If Commerce makes a preliminary determination that the products are circumventing duty orders, then Commerce will order Customs to "suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry." 19 C.F.R. § 351.225(*l*)(2). "Liquidation means the final computation or ascertainment of duties on entries for consumption or drawback entries." *Id.* § 159.1. Generally, "Customs has one year from the time of filing to liquidate an entry under 19 U.S.C. § 1504(a)." *Ford Motor Co. v. United States*, 811 F.3d 1371, 1374 (Fed. Cir. 2016). Suspension of liquidation enables Commerce to impose duties on entries that might otherwise escape duty liability pending Commerce's final determination that the products are circumventing duty orders. As we discuss in detail below, Commerce must provide notice of the initiation of the scope inquiry (here, an anti-circumvention inquiry), which must include "[a] description of the product that is the subject of the scope inquiry" and "[a]n explanation of the reasons for the Secretary's decision to initiate a scope inquiry," 19 C.F.R. § 351.225(f)(1)(i)–(ii). If such notice is not given, Commerce cannot suspend liquidation of entries entered "on . . . the date of initiation of the scope inquiry." *Id.* § 351.225(*l*)(2).

II

On May 26, 2011, Commerce issued antidumping and countervailing duty orders on aluminum extrusions from the PRC. *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 Fed. Reg. 30,650 (Dep't of Commerce May 26, 2011); *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 Fed. Reg. 30,653 (Dep't of Commerce May 26, 2011) (collectively, "the Orders"). The Orders expressly included products made of alloy with an Aluminum Association series designation commencing with the number 6 (i.e., designations of 6xxx) where magnesium accounted for at least 0.1 percent but not more than 2.0 percent of total materials by weight. The Orders expressly excluded products made of alloy with an Aluminum Association series designation commencing with the number 5 (i.e., designations of 5xxx) and containing in excess of 1.0 percent magnesium by weight.

On October 22, 2015, the Aluminum Extrusions Fair Trade Committee ("AEFTC"), a trade association of domestic producers of

aluminum extrusions, filed a joint Scope Clarification and Anti-Circumvention Inquiry Request for certain merchandise from China Zhongwang Holdings, Ltd. and its affiliates (collectively, "Zhongwang"). On request from Commerce, AEFTC resubmitted its request on December 30, 2015, and contended that Zhongwang's 5050-grade aluminum alloy extrusion products circumvented the scope of the Orders. AEFTC contended that 5050-grade aluminum alloy, which has between 1.1 and 1.8 percent magnesium by weight and therefore "technically meets the scope exclusion for 5xxx series," "behaves like in-scope 6xxx series subject merchandise" and thereby circumvented the Orders. *Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention Inquiry* ("Initiation Notice"), 81 Fed. Reg. 15,039, 15,042 (Dep't of Commerce Mar. 21, 2016); J.A. 610. AEFTC's application focused on "Zhongwang and its affiliates' '5050' alloy extrusion imports" and included evidence regarding Zhongwang's advertisements and sales of aluminum products. J.A. 95; Initiation Notice, 81 Fed. Reg. at 15,044.

On March 21, 2016, in response to AEFTC's request, Commerce initiated an anti-circumvention inquiry and published notice of the initiation of the inquiry in the Federal Register. As AEFTC acknowledged, Commerce "initiated this anti-circumvention inquiry only on Zhongwang," J.A. 1032, even though Commerce stated that AEFTC provided evidence that was not limited to Zhongwang, such as "information indicating that domestic producers [were] competing with Chinese-sourced 5050-grade aluminum alloy products" and "evidence showing that such 5050-grade aluminum alloy extruded products [were] marketed by Chinese producers to purchasers in the same manner that 6xxx-series [were] marketed." Initiation Notice, 81 Fed. Reg. at 15,043.

Commerce's "Summary" of the Initiation Notice stated:

> In response to a request from [AEFTC], [Commerce] is initiating an anti-circumvention inquiry pursuant to [19 U.S.C. § 1677j(c) and (d)] . . . to determine whether extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, and exported by [Zhongwang] are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).

Initiation Notice, 81 Fed. Reg. at 15,039 (footnote citing the Orders omitted).

Under the heading "Merchandise Subject to the Anti-Circumvention Inquiry," Commerce stated, "This anti-circumvention inquiry covers extruded aluminum products that meet the chemical

specifications for 5050-grade aluminum alloy, which are heat-treated, and exported by Zhongwang." Initiation Notice, 81 Fed. Reg. at 15,042 (footnote listing the "names of known Zhongwang's Chinese and U.S. affiliates" omitted). But as pertinent here, Commerce also stated:

> The Department intends to consider whether the inquiry should apply to all imports of extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy and are heat-treated, regardless of producer, exporter, or importer, from the PRC.

Id.

Following the publication of the Initiation Notice, Commerce issued an anti-circumvention questionnaire only to Zhongwang. Zhongwang failed to respond.

On July 8, 2016, after the deadline for Zhongwang's response passed, AEFTC requested that Commerce "immediately issue anti-circumvention questionnaires to additional Chinese producers believed to be circumventing the orders," including Tai-Ao. J.A. 1033–34. It appears that Commerce did not issue additional questionnaires. On September 28, 2016, Endura Products, Inc., a domestic interested party, submitted evidence that "multiple companies" were "importing inquiry merchandise from multiple producers/exporters." J.A. 1060–61. On October 7, 2016, AEFTC submitted evidence "indicating at least 25 other Chinese companies that [were] producing and/or exporting inquiry merchandise." *Id.* at 1060.

In a Preliminary Determination Memorandum dated November 3, 2016, Commerce "[found] that the record support[ed] applying [the anti-circumvention] inquiry to all imports from the PRC of extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy and are heat treated." J.A. 1060–61. In support of its determination, Commerce cited the information provided by Endura and AEFTC after the publication of the Initiation Notice and Commerce's "prior and ongoing scope proceedings concerning 5050 products," which demonstrated that companies including Regal were "likewise producing, exporting, and/or importing inquiry merchandise." *Id.*

On November 14, 2016, Commerce published its Preliminary Determination in the Federal Register, and, under the heading "Merchandise Subject to the Anti-Circumvention Inquiry," stated:

> The products covered by this inquiry are heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy (inquiry merchandise), regardless of producer, exporter, or importer, from the PRC.

Aluminum Extrusions from the People's Republic of China: Affirmative Preliminary Determination of Circumvention ("Preliminary Determination"), 81 Fed. Reg. 79,444, 79,445 (Dep't of Commerce Nov. 14, 2016).

Commerce also preliminarily determined that all such imports were "circumventing, and should be included within, the scope of the Orders." *Id.* at 79,445–46. Instead of applying its Preliminary Determination to product entries made on or after November 14, 2016, Commerce applied suspension to all entries made on or after March 21, 2016. Commerce accordingly instructed Customs "to suspend liquidation of inquiry merchandise from the PRC (regardless of producer, exporter, or importer), entered, or withdrawn from warehouse, for consumption, on or after March 21, 2016, the date of publication of the initiation of this inquiry" and to "require a cash deposit of estimated duties at the rate applicable to the exporter, on all unliquidated entries of inquiry merchandise entered, or withdrawn from warehouse, for consumption on or after March 21, 2016." *Id.* at 79,446.

Tai-Ao and Regal challenged Commerce's liquidation instructions before the Trade Court, arguing that the anti-circumvention initiation notice published on March 21, 2016, "did not provide adequate notice that their products were subject to the inquiry and therefore that liquidation should not have been suspended as of that date." *Tai-Ao I*, 391 F. Supp. 3d at 1305. Tai-Ao cited previous scope determinations made under § 351.225(k) for Sinobec Resources LLS, Kota International LTD, and Trending Imports LLC, which determined that "5050-grade extrusions were nonscope merchandise,"[2] arguing that "the existence of the 5050-grade scope rulings coupled with the fact that the Initiation Notice was limited to Zhongwang engendered a reliance interest that [duty] liability would not be assessed until the circumvention inquiry was expressly initiated as to Tai-Ao." Pls.' Mem. Law in Supp. Mot. J. Agency R. at 44–45, *Tai-Ao I*, 391 F. Supp. 3d 1301 (Ct. Int'l Trade 2019). Regal made similar arguments.

Commerce determined that the statement that Commerce "intend[ed] to consider whether the inquiry should apply to all imports" including those of Tai-Ao and Regal was sufficient to make parties "aware of the legal consequences of an affirmative determination."

[2] Tai-Ao cited scope rulings made pursuant to 19 C.F.R. § 351.225(k) in 2012 and 2016 for Kota International, Ltd., Trending Imports, LLC, and Sinobec Resources LLS, which found that those entities' aluminum extrusions made from 5050 alloy were outside the scope of the Orders. Commerce later reversed its preliminary rulings as to Trending Imports, LLC and Kota International, finding in a final determination that issued concurrently with the Final Determination for Tai-Ao and Regal that Kota and Trending Imports' products were circumventing the Orders.

Def.'s Opp'n Consolidated Pls.' Mots. J. Agency R. at 43, *Tai-Ao I*, 391 F. Supp. 3d 1301 (Ct. Int'l Trade 2019).

On appeal, the Trade Court concluded that "Commerce's decision to suspend liquidation with respect to [Tai-Ao and Regal] from the date of the Initiation Notice was impermissible because [Tai-Ao and Regal] did not receive adequate notice at that time. The Preliminary Determination [on November 14, 2016] provided the first notice that [Tai-Ao and Regal's] products were subject to the inquiry, and therefore liquidation should be assessed as of that date." *Tai-Ao I*, 391 F. Supp. 3d at 1313–14. The Trade Court remanded to Commerce to reformulate its liquidation instructions accordingly. *Id.* at 1316. Commerce filed reformulated instructions, which the Trade Court sustained as "consistent with the remand order." *Tai-Ao II*, 415 F. Supp. 3d at 1395.

AEFTC appeals the Trade Court's decision sustaining Commerce's reformulated liquidation instructions. Neither Commerce nor any other party to the Trade Court proceeding have appeared in this appeal. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

DISCUSSION

The sole issue on appeal is whether Commerce's Initiation Notice, published on March 21, 2016, provided adequate notice to Tai-Ao and Regal that their products would be subject to Commerce's anti-circumvention inquiry and therefore their unliquidated entries entered on or after that date could be subject to duties. "We review the [Trade Court's] decision to sustain Commerce's final results and its remand redeterminations de novo." *SolarWorld Ams., Inc. v. United States*, 962 F.3d 1351, 1356 (Fed. Cir. 2020). We review whether Commerce's initial decision, prior to remand, was "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). "A party may challenge an interlocutory decision of a trial court on appeal from the final judgment." *Sears Roebuck & Co. v. United States*, 22 F.3d 1082, 1084 (Fed. Cir. 1994), *superseded by statute on other grounds*, 19 U.S.C. § 1202, *as recognized in JVC Co. of Am., Div. of US JVC Corp. v. United States*, 234 F.3d 1348, 1354–55 (Fed. Cir. 2000).

Two subsections of Commerce's anti-circumvention inquiry regulations are at issue. First, 19 C.F.R. § 351.225(*l*) authorizes Commerce to order suspension of liquidation of merchandise entered on or after the date of the initiation of the scope inquiry. It provides:

> If liquidation has not been suspended [at the time of an affirmative preliminary determination of circumvention], the Secretary will instruct the Customs Service to suspend liquidation

> and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry.

19 C.F.R. § 351.225(*l*)(2). Thus, "[w]hen Commerce rules that a product falls within the scope of an order, but 'there has been no [previous] suspension of liquidation,' a new suspension must be ordered beginning only [with entries] 'on or after the date of initiation of the scope inquiry.'" *Sunpreme Inc. v. United States*, 946 F.3d 1300, 1319 (Fed. Cir. 2020) (quoting 19 C.F.R. § 351.225(*l*)(3)) (second alteration in original); *see also* 19 C.F.R. § 351.225(*l*)(2).

Second, 19 C.F.R. § 351.225(f)(1) requires Commerce to provide notice of the initiation of the anti-circumvention inquiry. If Commerce decides to initiate a scope inquiry (such as an anti-circumvention inquiry) on application from an interested party, Commerce is required to provide notice that includes "[a] description of the product that is the subject of the scope inquiry" and "[a]n explanation of the reasons for [Commerce's] decision to initiate a scope inquiry." 19 C.F.R. § 351.225(f)(1)(i)–(ii).[3]

This notice requirement is designed to avoid unfairness to importers and foreign exporters. In explaining why the regulations require Commerce to first make an affirmative preliminary or final determination of circumvention before suspending liquidation, Commerce noted it must provide prior notice to foreign interested parties that provides "a meaningful opportunity to present relevant information and defend their interests":

> Suspension of liquidation is an action with a potentially significant impact on the business of U.S. importers and foreign exporters and producers. The Department should not exercise this

[3] Commerce has proposed regulations that would allow Commerce, once it has reached an affirmative preliminary determination of circumvention, to instruct Customs "[t]o suspend liquidation of all . . . unliquidated entries of the product at issue [for which liquidation was not previously suspended], and apply the applicable cash deposit rate under the order to those entries." *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws* ("Proposed Regulations"), 85 Fed. Reg. 49472, 49,501 (Dep't. of Commerce Aug. 13, 2020) (proposed § 351.226(l)(2)(ii)). The proposed regulations would permit Commerce to suspend liquidation of all entries that are unliquidated dating "back to the earliest suspension date" under the original duty orders, unlike the current regulations, which only allow Commerce to suspend liquidation of entries made on or after the date of the initiation of the scope inquiry. *Id.* at 49,483, 49,488.

Commerce has also proposed regulations that would remove the current notice requirements for initiation of circumvention inquiries. *Compare* 19 C.F.R. § 351.225(f)(1)(i)–(ii) with Proposed Regulations, 85 Fed. Reg. at 49,496–97, 49,499–500. Commerce described the proposed regulations as "remov[ing] unnecessary and burdensome notice and service requirements." 85 Fed. Reg. at 49,472.

We express no opinion as to the validity of the proposed regulations or their applicability to circumstances such as those present here.

> governmental authority before it has first given all parties a meaningful opportunity to present relevant information and defend their interests, and before the Department gives a reasoned explanation for its action. Formal initiation of a scope inquiry by the Department represents nothing more than a finding by the Department that it cannot resolve the issue on the basis of the plain language of the scope description or the clear history of the original investigation. It would be extremely unfair to importers and exporters to subject entries not already suspended to suspension of liquidation and possible duty assessment with no prior notice and based on nothing more than a domestic interested party's allegation. Because, when liquidation has not been suspended, Customs, at least, and perhaps the Department as well, have viewed the merchandise as not being within the scope of an order, importers are justified in relying upon that view, at least until the Department rules otherwise. Therefore, the Department will not order the suspension of liquidation until it makes either a preliminary or final affirmative scope ruling, whichever occurs first.

Antidumping Duties; Countervailing Duties ("Preamble"), 62 Fed. Reg. 27,296, 27,328 (Dep't of Commerce May 19, 1997) (Final Rule).

Thus, Commerce could only suspend liquidation of entries made on or after March 21, 2016, that were unliquidated as of November 14, 2016, if Commerce provided adequate notice that the merchandise subject to the scope inquiry included Tai-Ao and Regal's products on March 21, 2016. The notice requirement reflects "the broader due-process principle that before an agency may enforce an order or regulation by means of a penalty or monetary sanction, it must 'provide regulated parties fair warning of the conduct [the order or regulation] prohibits or requires.'" *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1300–01 (Fed. Cir. 2013) (quoting *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 156 (2012)) (alteration in original).

Commerce's statement in the Initiation Notice on March 21, 2016, that the anti-circumvention inquiry "cover[ed] extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, and exported by Zhongwang" did not provide notice to Tai-Ao and Regal, and neither Commerce nor any other party contended that it did. Initiation Notice, 81 Fed. Reg. at 15,042.

Commerce's additional language in the March 21, 2016, Initiation Notice that it "intend[ed] to consider whether the inquiry should

apply to all imports . . . regardless of producer, exporter, or importer, from the PRC" also did not provide sufficient notice that all imports other than those of Zhongwang would be "cover[ed]" by the inquiry. *Id.*[4] A statement of intention to "consider whether the inquiry should apply to all imports" is not the same as a notice that such imports are within the scope of the inquiry.

Several other factors support this conclusion. First, here, the initial anti-circumvention inquiry was not country-wide. Anti-circumvention determinations may be company-specific or country-wide.[5] The Initiation Notice here was not country-wide since it named Zhongwang's products specifically as subject to the inquiry. Only on November 14, 2016, did the inquiry become country-wide when Commerce announced that "[t]he products covered by this inquiry [were] heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy . . . regardless of producer, exporter, or importer, from the PRC." Preliminary Determination, 81 Fed. Reg. at 79,445.

Second, the regulations require that Commerce's Initiation Notice include "[a]n explanation of the reasons for [Commerce's] decision to initiate a scope inquiry." 19 C.F.R. § 351.225(f)(1)(ii). As explained in the Preamble, "a reasoned explanation" as to why Commerce initiated an anti-circumvention inquiry that could lead to the imposition of duties helps alleviate potential "unfair[ness]" by providing "prior notice." Preamble, 62 Fed. Reg. at 27,328.

Here, Commerce's explanation for why it initiated the inquiry focused primarily on Zhongwang. Commerce expressly cited AEFTC's "Scope Clarification and Anti-Circumvention Inquiry Request for cer-

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[4] Commerce explained in its Final Determination Memorandum that it included language of its "inten[t] to consider" products from entities other than Zhongwang because, "[a]t the time of the initiation of this anti-circumvention inquiry, *the record contained evidence indicating that Zhongwang and its numerous alleged affiliates were producing, exporting, and/or importing inquiry merchandise. Based on this evidence*, [Commerce] indicated in the Initiation Notice that it intended to consider applying the determination in this inquiry to all imports of extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy and are heat-treated, regardless of producer, exporter, or importer, from the PRC." *Anti-Circumvention Inquiry Regarding Aluminum Extrusions from the People's Republic of China* (Final Determination Memorandum) at 29 (Dep't of Commerce Jul. 20, 2017) (emphasis added) (footnotes omitted).

[5] As Commerce explained in proposing new regulations for anti-circumvention inquiries,

> In its experience, Commerce has witnessed scenarios in which the circumvention determined to exist was unique to the interested party under review. In that situation, a company-specific circumvention determination is warranted. However, Commerce has also found circumvention to exist in other cases in which the circumvention warranted a country-wide determination.

Proposed Regulations, 85 Fed. Reg. at 49,489.

Proposed § 351.226(m)(1) would allow Commerce to "consider, based on the available record evidence, whether the circumvention determination should be applied on a country-wide basis." *Id.* at 49,501.

tain merchandise from Zhongwang," which Commerce described as "contend[ing] that Zhongwang's 5050-grade aluminum alloy extrusion products are circumventing the scope of the Orders," and Commerce explained that, "in response" to that request by AEFTC, it initiated an anti-circumvention inquiry as to Zhongwang. Initiation Notice, 81 Fed. Reg. at 15039–40.

Third, our determination is further supported by Commerce's conduct during its investigation, which would not have put Tai-Ao and Regal on notice that they were subject to the inquiry before the Preliminary Determination was published. After the Initiation Notice was published, Commerce issued a questionnaire only to Zhongwang, suggesting that Commerce intended its inquiry to pertain only to Zhongwang. In the period between the Initiation Notice and the Preliminary Determination, Commerce received additional information from domestic interested parties, AEFTC and Endura, that led Commerce to apply its inquiry to entities other than Zhongwang. This additional information was significant because it led Commerce to expand the scope of its inquiry.

There are no other indicia that would support a different result. AEFTC relies on Commerce's statement in the March 2016 notice that, "[i]n accordance with 19 C.F.R. 351.225(*l*)(2), if [Commerce] issues a preliminary affirmative determination, [Commerce would] instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry." Appellant's Br. 18 (quoting Initiation Notice, 81 Fed. Reg. at 15,044) (second alteration in original). But "the merchandise at issue" at the time referred to "the merchandise subject to the inquiry," namely, products "exported by Zhongwang." Initiation Notice, 81 Fed. Reg. at 15,044, 15,042. It was not until November 14, 2016, that Commerce changed the description of the "Merchandise Subject to the Anti-Circumvention Inquiry" and thus provided adequate notice that Tai-Ao and Regal's products would be subject to the anti-circumvention inquiry, and liquidation could only have been suspended for Tai-Ao and Regal as of that date. Preliminary Determination, 81 Fed. Reg. at 79,445.

Because Commerce did not provide adequate notice to Tai-Ao and Regal until November 14, 2016, Commerce's instructions to suspend liquidation effective March 21, 2016, were not in accordance with law. We affirm the Trade Court's decision sustaining Commerce's reformulated liquidation instructions as in accordance with law.

AFFIRMED

COSTS

No costs.

U.S. Court of International Trade

Slip Op. 20–178

JIANGSU SENMAO BAMBOO and WOOD INDUSTRY CO., LTD., et al., Plaintiffs, and GUANGDONG YIHUA TIMBER INDUSTRY CO., LTD., et al., Plaintiff-Intervenors, v. UNITED STATES, Defendant, and COALITION FOR AMERICAN HARDWOOD PARITY, et al., Defendant-Intervenors.

Before: Timothy C. Stanceu, Chief Judge
Consol. Court No. 15–00225

[Sustaining an agency determination issued in response to the court's order in an antidumping duty proceeding.]

Dated: December 10, 2020

Jeffrey S. Neeley, Husch Blackwell, LLP, of Washington, D.C., for plaintiffs and defendant-intervenors Jiangsu Senmao Bamboo and Wood Industry Co., Ltd., Baishan Huafeng Wooden Product Co., Ltd., Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd., Chinafloors Timber (China) Co., Ltd., Dalian Kemian Wood Industry Co., Ltd., Dalian Qianqiu Wooden Product Co., Ltd., Dasso Industrial Group Co., Ltd., Dongtai Fuan Universal Dynamics, LLC., Dun Hua Sen Tai Wood Co., Ltd., Dunhua City Wanrong Wood Industry Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., Fusong Qianqiu Wooden Product Co., Ltd., Guangzhou Panyu Kangda Board Co., Ltd., Hunchun Forest Wolf Wooden Industry Co., Ltd., Jiafeng Wood (Suzhou) Co., Ltd., Jiangsu Guyu International Trading Co., Ltd., Jiangsu Kentier Wood Co., Ltd., Jiangsu Mingle Flooring Co., Ltd., Jiangsu Simba Flooring Co., Ltd., Jiashan HuiJiaLe Decoration Material Co., Ltd., Jilin Forest Industry Jinqiao Flooring Group Co., Ltd., Kemian Wood Industry (Kunshan) Co., Ltd., Nanjing Minglin Wooden Industry Co., Ltd., Puli Trading Limited, Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai/Linyi Youyou Wood Co., Ltd., Suzhou Dongda Wood Co., Ltd., Tongxiang Jisheng Import And Export Co., Ltd., Zhejiang Fudeli Timber Industry Co., Ltd., and Zhejiang Shiyou Timber Co., Ltd.

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Harold D. Kaplan and *Craig A. Lewis*, Hogan Lovells US LLP, of Washington, D.C., for plaintiffs Armstrong Wood Products (Kunshan) Co., Ltd. and Armstrong Flooring, Inc.

Mark R. Ludwikowski, Clark Hill PLC, of Washington, D.C., for plaintiff and plaintiff-intervenor Lumber Liquidators Services, LLC.

Ronald M. Wisla and *Lizbeth R. Levinson*, Fox Rothschild LLP, of Washington, D.C., for plaintiffs, plaintiff-intervenors, and defendant-intervenors BR Custom Surface, CDC Distributors, Inc., CLBY Inc. *doing business as* D&M Flooring, Custom Wholesale Floors, Inc., Dalian Penghong Floor Products Co., Ltd., Doma Source LLC, Dunhua City Hongyuan Wooden Products Co., Ltd., Galleher Corporation, HaiLin LinJing Wooden Products, Ltd., Hangzhou Hanje Tec Co., Ltd., Hangzhou Zhengtian Industrial Co., Ltd., Huzhou Chenghang Wood Co., Ltd., Huzhou Fulinmen Imp. & Exp. Co., Ltd.,

Metropolitan Hardwood Floors, Inc., Mudanjiang Bosen Wood Industry Co., Ltd., Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd., Pinnacle Interior Elements, Ltd., Real Wood Floors, LLC, Shanghai Eswell Timber Co., Ltd., Shanghai Shenlin Corporation, Shenyang Haobainian Wooden Co., Ltd., Shenzhenshi Huanwei Woods Co., Ltd., Swiff Train Co., Timeless Design Import LCC, V.A.L. Floors, Inc., Wego Chemical & Mineral Corp., Xuzhou Shenghe Wood Co., Ltd., Zhejiang Dadongwu Greenhome Wood Co., Ltd., Zhejiang Fuma Warm Technology Co., Ltd., Zhejiang Longsen Lumbering Co., Ltd., and Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd.

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Timothy C. Brightbill, Tessa V. Capeloto, and *Stephanie M. Bell*, Wiley Rein, LLP, of Washington, D.C., for defendant-intervenor Coalition for American Hardwood Parity.

Tara K. Hogan, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington D.C., for defendant United States. With her on the brief were *Joseph H. Hunt*, Assistant Attorney General and *Jeanne E. Davidson*, Director. Of counsel on the brief was *Rachel Bogdan*, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce.

OPINION

Stanceu, Chief Judge:

The plaintiffs in this consolidated action contested the final determination of the International Trade Administration, U.S. Department of Commerce ("Commerce" or the "Department"), which concluded the second periodic administrative review of an antidumping duty order on multilayered wood flooring from the People's Republic of China ("China"). *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012–2013*, 80 Fed. Reg. 41,476 (Int'l Trade Admin. July 15, 2015) ("*Final Results*").

Before the court is the "Second Remand Redetermination" submitted by the Department in response to the order of the court in *Jiangsu Senmao Bamboo & Wood Ind. Co., Ltd. v. United States*, 44 CIT __, 435 F. Supp. 3d 1278 (2020) ("*Senmao II*"). Final Results of Redetermination Pursuant to Court Order (May 8, 2020), ECF No. 161–1 ("*Second Remand Redetermination*"). Also before the court are three comment submissions on the Second Remand Redetermination: (1) a submission made on behalf of various plaintiffs (the "Senmao Plaintiffs"), Senmao Pls.' Comments on Results of Redetermination pursuant to Ct. Order from Slip Op. 20–31 (Mar. 11, 2020) (June 8, 2020), ECF No. 164 ("*Senmao Pls.' Comments*"); (2) a submission by Guangdong Yihua Timber Indus. Co., Ltd. ("Yihua"), Pl.-Int. Guangdong Yihua Timber Indus. Co., Ltd.'s Comments in Support of May 8, 2020 Final Results of Redetermination pursuant to Ct. Order (June 8,

2020), ECF No. 166 ("*Yihua's Comments*"); and (3) a submission by the Coalition for American Hardwood Parity (the "Coalition"), Coalition for American Hardwood Parity's Comments on the Results of Remand Redetermination (June 8, 2020), ECF No. 165 ("*Def.-Int.'s Comments*"). Defendant submitted a reply to these comment submissions. Def.'s Reply to Comments on Second Remand Redetermination (June 23, 2020), ECF No. 167.

The Senmao Plaintiffs and Yihua comment that the Second Remand Redetermination complies with the court's order in *Senmao II* and must be sustained. *Senmao Pls.' Comments* 2; *Yihua's Comments* 2. The Coalition, although expressing disagreement with a ruling reached in *Senmao II*, agrees that the Second Remand Redetermination is consistent with the court's order. *Def.-Int.'s Comments* 1–2. There is no objection to the Second Remand Redetermination from any party. The court sustains the Second Remand Redetermination.

I. BACKGROUND

Background on this litigation is presented in *Senmao II*, 435 F. Supp. 3d at 1281 and in *Jiangsu Senmao Bamboo & Wood Ind. Co., Ltd. v. United States*, 42 CIT __, 322 F. Supp. 3d 1308, 1313–16 (2018) ("*Senmao I*"), and is supplemented briefly herein.

In the *Final Results*, Commerce assigned individual weighted-average dumping margins to two respondent exporter/producers: Dalian Dajen Wood Co., Ltd. was assigned a zero margin, and Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. ("Senmao") was assigned a margin of 13.74%. *Final Results*, 80 Fed. Reg. at 41,478. Commerce assigned the 13.74% margin determined for Senmao to the numerous respondents Commerce considered to have established independence from the government of China but that were not selected for individual examination (the "non-selected" companies). *Id.* Responding to the court's decision in *Senmao I*, Commerce redetermined Senmao's margin, reducing it from 13.74% to 6.55%, and assigned the 6.55% margin to 46 non-selected companies. *Senmao II*, 435 F. Supp. 3d at 1281 (citing Final Results of Redetermination Pursuant to Ct. Order (June 3, 2019), ECF No. 145–1).

The only issue remaining in this litigation is the effectuation of the court's order in *Senmao II* directing Commerce to reverse its decision to adjust downward the export prices of subject merchandise to account for what the Department considered irrecoverable value-added tax (the "VAT adjustment"). In *Senmao I*, 322 F. Supp. 3d at 1345, and *Senmao II*, 435 F. Supp. 3d at 1300, the court held that the Department's VAT adjustment was contrary to law. The court held in *Senmao II* that "[t]he Department's decision in the First Remand Rede-

termination to maintain its adjustments under 19 U.S.C. § 1677 a(c)(2)(B) to the starting prices used to determine export price was contrary to law in relying upon an invalid interpretation of the Tariff Act, which does not permit those deductions." 435 F. Supp. 3d at 1300. The court ordered Commerce to "issue a new determination that does not commit this error." *Id.*

In the process of responding to the court's order in *Senmao II*, the Department circulated a draft remand redetermination to the parties that did not modify the 6.55% margins assigned to Senmao and the non-selected respondents. *Second Remand Redetermination* 5. Certain plaintiffs commented that Commerce, while stating in the draft an intention to remove its VAT adjustment, did not calculate a redetermined margin that accomplished this. The Department acknowledged that it "inadvertently did not exclude the downward VAT adjustment in our margin calculation in the *Draft Remand*." *Id.* at 7. Stating in the Second Remand Redetermination that it had corrected this error, Commerce recalculated Senmao's margin, reducing it by 2.63%, from 6.55% to 3.92%. *Id.* at 8. Commerce assigned the 3.92% rate to non-selected companies not previously excluded from the antidumping duty order. *Id.*

II. DISCUSSION

Commerce states in the Second Remand Redetermination that "[i]n light of the Court's decision, we have reviewed our calculations for Senmao and have excluded any downward adjustment for irrecoverable VAT that may have been applied to Senmao." *Id.* at 3. Concluding in the draft version of the Second Remand Redetermination that it had made no such downward adjustment and therefore did not exclude one, Commerce stated in the final version that in response to comments and "upon further review of the record" it concluded that it had adjusted Senmao's "U.S. Net Price by 92 percent, making an eight percent irrecoverable VAT adjustment" and that "consistent with the Court's remand order, we have removed the irrecoverable VAT downward adjustment to Senmao's export price." *Id.* at 7.

Commerce added that "we respectfully disagree with the Court's finding that Commerce impermissibly construed section 772(c)(2)(B) of the [Tariff] Act [19 U.S.C. § 1677a(c)(2)(B)] with respect to irrecoverable VAT, and maintain that our current practice is consistent with the statute and thus in accordance with law. For this reason, we are conducting this remand under respectful protest." *Id.* at 8. In their comments, defendant-intervenors also take issue with the court's interpretation of this statutory provision. *Def.-Int.'s Comments* 1–2. While stating its objection, neither party provides any analysis to

explain its disagreement with the court's holding that the Department's VAT deductions were prohibited by the Tariff Act.

The court notes, additionally, that Commerce, in the Second Remand Redetermination, does not explain its recalculation of Senmao's margin in a way allowing the court to ascertain whether the elimination of the 8% downward adjustment to U.S. price correctly resulted in a margin reduction of 2.63%. Nevertheless, the court also notes that no party contests this recalculation. Any objection to the calculation, therefore, is waived.

III. CONCLUSION

For the reasons stated above, the court concludes that the Second Remand Redetermination must be sustained. Judgment will enter accordingly.

Dated: December 10, 2020
New York, New York

/s/ Timothy C. Stanceu
TIMOTHY C. STANCEU, CHIEF JUDGE

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